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DEPARTMENT OF HUMAN SERVICES
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January 11, 2008

GENERAL LETTER NO. 23-F-4

ISSUED BY: Bureau of Purchased Services, Division of Fiscal Management

SUBJECT: Management Manual, Title 23, Chapter F, **SERVICES CONTRACTS**, Title page, revised; Contents (page 1), revised; pages 1 through 6, revised; and pages 7 through 29, new.

Summary

This general letter transmits the revised Chapter 23-F, **SERVICES CONTRACTS**, which contains policy information.

Policy changes within this chapter update the manual to include references to Department of Administrative Services' rules on state procurement and services contracts at 11 Iowa Administrative Code Chapters 105, 106, and 107.

Effective Date

Upon receipt.

Material Superseded

Remove the following pages from Management Manual, Title 23, Chapter F, and destroy them:

<u>Page</u>	<u>Date</u>
Title page	June 28, 1983
Contents (page 1)	June 28, 1983
1-6	June 28, 1983

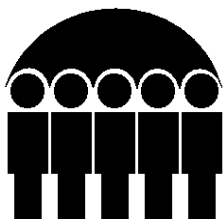
Additional Information

Refer questions about this general letter to Bureau of Purchased Services in the Division of Fiscal Management.

Revised January 11, 2008

Management Manual
Title 23
Chapter F

SERVICES CONTRACTS



Iowa
Department
of
Human Services

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Overview

This chapter provides general administrative information regarding Departmental contracting policies and practices. Contracting policies are based on

- ◆ Federal and state law, including Iowa Code section 8.47
- ◆ Iowa Administrative Code (rules), including 11 IAC Chapters 105, 106, and 107
- ◆ Procedures of the Department of Administrative Services, State Accounting Enterprise (DAS/SAE) and General Services Enterprise (DAS/GSE).

There are several types of contracting processes to choose from. The choice of procurement process is related to the cost and the duration of the contract. The contracting process includes, but is not limited to:

- ◆ Sole-source procurements,
- ◆ Emergency procurements,
- ◆ Informal contracts, and
- ◆ Formal contracts.

Procurement activities range from the three-bid informal process to the request for proposal (RFP) process.

Copies of an RFP and contract templates are available in the [Quick Guide to Service Contracting](#). The *Quick Guide to Services Contracting* provides

- ◆ Complete step-by-step instructions needed to complete the contracting process for each type of contract; and
- ◆ Guidance regarding the recommended forms to use for each process.

The *Quick Guide to Services Contracting* and copies of all recommended forms are located on the DHS network at [Hoovr3s2\FISCPUB](#).

This chapter also provides information regarding Departmental contract monitoring and review policies and procedures.

Definitions

“Contract owner” means the person who has overall corporate responsibility and accountability for the contract. A contract shall have a single owner.

“Contract manager” means the person accountable to the contract owner for ongoing contract activities. A contract may have more than one manager.

“DAS/SAE” means the State Accounting Enterprise in the Iowa Department of Administrative Services.

“I/3” means Integrated Information for Iowa, the state’s enterprise resource planning system for accounts payable, procurement, budgeting, human resources, and payroll.

“Monitoring” means any planned, unplanned, ongoing, or periodic activity that measures and ensures contractor compliance.

“Monitoring clauses” means contract requirements that describe the methods to oversee contractor compliance.

“Review clauses” means contract requirements that describe the methods to review the contractor’s performance.

“Payment clauses” means contract requirements that specify the amount of or the basis for payment, which is dependent on performance measures, monitoring clauses and any post-contract review procedures.

General Requirements

Legal reference: 11 IAC 106.11(8A), 106.12(8A), 107.4(8,8A)

All contracts, regardless of value or duration, must have a single number assigned to the contract to be used throughout the contracting process for consistency and tracking. The same number used for the procurement identification becomes the number for the resulting contract.

Each unit or division shall track the contract numbers assigned by maintaining:

- ◆ A list in a single location, and
- ◆ A single point of contact to be the “assigner” of contract numbers.

The format for assigning numbers is

- ◆ The abbreviation for the work unit (alphabetic designation), generally four letters,
- ◆ The fiscal year designation (a maximum of two digits), and
- ◆ The sequential contract number, beginning with 001 for each fiscal year.

All contracts must have payment, monitoring, and review clauses. All contract terms, including all renewals, shall not exceed six years.

There are presently four basic contract templates:

- ◆ The letter of agreement,
- ◆ The intergovernmental agreement template,
- ◆ The DHS contract template, and
- ◆ The fiscal agent contract template.

A *Pre-Contract Questionnaire* (PCQ) shall be completed and submitted for all new, renewed, and amended contracts regardless of the value or period of the contract. (See [Pre-Contract Questionnaire \(PCQ\)](#) for more information.) Contracted services are not to be performed until the PCQ is completed, signatures are obtained on the PCQ and the contract, and copies are distributed to the parties.

All contracts must be signed and dated by **all parties** before the contractor begins the work. The Department's designee is the last party to sign a contract. Obtain signatures from the service contractors before forwarding the contract to the Department designee for signature. Department signoffs cannot be delegated to positions below the identified positions:

- ◆ The Department director signs:
 - All contracts with a total value of \$50,000 or more;
 - All sole-source contracts, regardless of value; and
 - All emergency procurements, regardless of value.
- ◆ Contracts with a value \$0 through \$49,999, other than sole-source contracts and emergency procurements, may be signed by:
 - A division administrator,
 - A service area manager, or
 - A facility superintendent.

Maintain a contract file for each contract. At a minimum each file should contain

- ◆ The *Contract File Checklist*.
- ◆ A *Pre-Determination of Contracting* document,.
- ◆ All *Pre-Contract Questionnaires*.
- ◆ The contract.
- ◆ Any amendments.
- ◆ Any special reports that may be needed.
- ◆ Documentation of monitoring and review activities.
- ◆ Documentation of all contacts and meetings between the contractor and the contract manager.

Copies of all forms and contracts are available through a link in the [Quick Guide to Services Contracting](#) and at [Hoovr3s2/fiscpub/ Contract Documents](#).

Pre-Contract Questionnaire

A *Pre-Contract Questionnaire* (PCQ) is needed for tracking purposes when any contract is executed. A PCQ shall be completed and submitted for all new, renewed, and amended contracts regardless of the value or period of the contract. This requirement applies to all contract formats and to contracts with other state agencies, public entities, and private vendors.

When changes occur, a contract amendment and a new PCQ are needed. Changes include when a controlling interest in the contracting company changes and any company name changes.

The PCQ is a part of the I/3 system, and information needed to complete the PCQ is obtained from I/3. The Department of Administrative Services, State Accounting Enterprise (DAS/SAE), determines whether or not the contractor has an employer/employee relationship with the state and documents the information on the Pre-Contract Questionnaire Table (PCQT) in the I/3 system.

The PCQT lists vendors providing services whose relationship with the state has been reviewed by DAS/SAE and a determination was made that no employer/employee relationship exists with the state.

The document, *I/3 PCQT Search*, found in [Hoovr3s2/fiscpub/PCQ](#), explains how to find the PCQT number on the I/3 system. Place the PCQT number or vendor number on the PCQ before obtaining the Department signature.

If the service provider is not listed in I/3, directions are provided in the [Quick Guide to Services Contracting](#) regarding the appropriate steps to obtain the information. DAS/SAE must review the proposed, unsigned contract to determine if an employee/employer relationship will exist.

If, after review of the PCQ and supporting documents, DAS/SAE determines an employer/employee relationship will exist, the options are:

- ◆ To select another contractor that will meet the independent contractor test,
- ◆ To add the proposed contractor as an employee on payroll, or
- ◆ To use the state's third-party contract with Temporary Staffing Services to pay the contractor.

Once the DAS/SAE review is complete, the *Pre-Contract Questionnaire* (PCQ) and supporting materials will be returned.

Competitive Procurement Processes

Legal reference: 11 IAC 106.5(8A)

State agencies use competitive selection to acquire services from private entities when the value for a one-year service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement.

The following chart provides a reference for the procurement process to be used when considering the duration and the value of the contract.

Duration	Total Value (Include all extensions)	Process
One year	Less than \$1,000	No contract required
One year	Less than \$5,000	Informal
One year	\$5,000 to less than \$50,000	Informal or formal
One year	\$50,000 or more	Formal
Multi-year	Less than \$15,000	Informal
Multi-year	\$15,000 to less than \$150,000	Informal or formal
Multi-year	\$150,000 or more	Formal

EXCEPTIONS: Contracts with another state agency, a political subdivision of the state of Iowa (cities, counties, public school districts), the federal government, another state government, or a political subdivision of another state do not need to go through the competitive selection process.

Informal Competitive Process

Legal reference: 11 IAC 106.5(8A)

“Informal competition” is a streamlined competitive selection process in which at least three prospective service providers are identified as qualified to perform the work described in the scope of work.

Contact the prospective service providers in person, by telephone, fax, E-mail, or letter. Send copies of the scope of work to prospective service providers. When three prospective service providers are not available, document the reason in the contract file as to why fewer than three service providers were contacted.

Complete the following steps to implement the informal competitive process:

1. Complete a *Pre-Determination for Contracting* form.
2. Develop the scope of work. The scope of work should detail the services to be purchased.
3. Prepare a solicitation document using the DHS *Informal Competitive Solicitation* template.
4. Locate the names and addresses of at least three firms or individuals that would be qualified to provide the service.
5. Post the notice of solicitation to the [Targeted Small Business](#) web site 48 hours before issuing the informal solicitation to the identified vendors. If any targeted small business firm requests an opportunity to submit a proposal, add the firm to the list of identified potential service providers.
6. Issue the *Informal Competitive Solicitation* to the potential service providers. The informal competitive process is intended to be a shorter process. Remember to provide enough time for responding firms to submit a complete response to your solicitation.

7. Document the date and time written responses are received.
8. Disqualify proposals that do not meet the mandatory requirements of the *Informal Competitive Solicitation* request. Send a letter disqualifying the bid to the bidder.
9. Evaluate the proposals and determine which service provider's proposal most closely meets the requirements of the solicitation. Use the *Informal Bid Selection Documentation* form to document scoring.
10. Select the winning bid. Issue a *Notice of Intent to Enter into Contract Negotiations* to all vendors who submitted a bid regarding the winning bid.
11. Enter into contract negotiations with the top finalist. Prepare the contract document and acquire signatures of all parties.
12. Create a contract file with all documents. Complete the *Contract File Checklist* to assure all necessary documents are included in the contract file.

Formal Competitive Process

Legal reference: 11 IAC Chapter 106.5(8A)

"Formal competition" is a competitive selection process using a request for proposal (RFP) or other competitive selection process, an issuing officer, and an evaluation committee to procure a service contract.

The requirements for competitive procurement are based on the total cost of the potential contract. When determining the projected cost or value of the contract, consider the amount needed for the initial term of the contract plus any and all renewal options.

State agencies **may** use competitive selection to acquire services from private entities when the value of a one-year service contract is equal to or greater than \$5,000 or the value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000.

State agencies **must** use competitive selection to acquire services from private entities when the value of a one-year services contract is equal to or exceeds \$50,000 and a multiyear services contract is equal to or exceeds \$150,000.

Issuing Officer

An issuing officer must be assigned at the beginning of the contracting process. The issuing officer is the **sole point of contact for communication** for and with all vendors. The issuing officer:

1. Completes a *Pre-Determination for Contracting* form.
2. Writes and issues the request for proposal (RFP).
3. Posts the RFP to the appropriate web sites.
4. Acts as the sole point of contact for communication with all vendors, including:
 - ◆ Providing any resource documents or rooms,
 - ◆ Leading and coordinating the bidder's conference, and
 - ◆ Receiving all correspondence and proposals.
5. Establishes the evaluation committee.
6. Prepares instructions to the evaluation committee regarding meeting dates, evaluation procedure, responsibilities, and appropriate conduct during evaluation.
7. Reviews incoming proposals to determine if they comply with the mandatory requirements. Use the *RFP Mandatory Requirements Checklist* to assist in the evaluation or create your own form.
8. Disqualifies proposals that do not meet the mandatory requirements of the RFP and sends a letter disqualifying the bid to the bidder.
9. Packages copies of qualifying proposals, evaluation directions, and blank score sheets for the evaluation committee members.
10. Facilitates the evaluation process or coordinates a facilitator to oversee the committee.
11. Documents the scores of the committee and finalizes a recommendation with the committee to award a contract.

12. Prepares a summary for recommendations regarding the final decision to award.
13. Prepares and issues the Notice of Intent to Enter into Contract Negotiations.
14. Assists or leads contract negotiations and completing the contract with the awarded bidder.
16. Maintains the required documents for the contract file to be given to the contract manager or program manager upon execution of the contract.
15. Acts as the Department contact person and responds to any requests for copies of the RFP or bidder proposals. (See the [Quick Guide to Service Contracting](#) for additional information.)
17. Represents the Department if an appeal is filed. Gathers and submits all appeal documents requested by the Appeals Section.

Request For Proposal

A request for proposal (RFP) takes considerable time to plan and execute. Before writing the RFP, determine the timeline for the RFP. Use the *RFP-Contract Timeline Requirements* form. The form lists the steps in the RFP process and recommends minimum timeframes for each task.

Use the *RFP Template* for all RFPs to ensure that all essential clauses pertinent to DHS are included. Develop the RFP's focus in the introduction; then compile the administrative information and the scope of work.

The RFP **introduction** provides information regarding:

- ◆ The **purpose** statement should include:
 - Any legal references associated with the intended program or service,
 - Information about the award date, and
 - The expected duration of the contract;
- ◆ **Background information** should include a summary of the present environment and how or what you are wanting to change; and
- ◆ All pertinent **definitions** that may assist vendors in understanding and responding to the RFP, especially acronyms.

The **administrative** information section identifies key information about the logistics of submitting a proposal.

The **scope of work** section defines **what the state wants to purchase**. Gathering the necessary information, specifics, and data to write a clear and detailed scope of work is one of the biggest steps in the RFP process. Focus on the outcomes or what is to be accomplished, not *how* the vendor should accomplish it.

A good scope of work should:

- ◆ Be clear and concise, using commonly used and easily understood terms and language.
- ◆ Include requirements that allow the contractor the latitude to work in a manner best suited for innovation and creativity. Generally, the RFP should not include detailed procedures that dictate how the work is to be accomplished.
- ◆ Use outcome-based scope of work statements: e.g., the contractor will provide or produce (an activity, service or product) to or for (a customer, client, or stakeholder) to produce (the intended benefit or outcome).

Performance work statements and outcome-based scope of work statement provide a means to measure the contractor's performance and answer the question, "Did the state get the services specified under the contract?"

The **format and content** section define what should be included in a bid proposal. The format is designed to facilitate the submission of a bid proposal that is easy to understand and evaluate.

The **evaluation** section explains the process that will be used to determine which bid proposal provides the greatest benefits to the Department.

The evaluation section should clarify that the Department will not necessarily award a contract to the bidder offering the lowest cost to the Department but to the compliant vendor that offers the state the best value. The goal of the evaluation process is to achieve the best value, integrating quality and price, when selecting a contractor.

A sample contract may be included in the issued RFP and there are several attachments that bidders must complete and submit with the bid proposal.

Bid Bond

When drafting the RFP, consider whether a bid bond will be required. The bid bond is to ensure that the bidder will actually enter into a contract to perform the work if selected.

The chosen bidder forfeits the bid bond if the bidder:

- ◆ Withdraws the bid proposal after the Notice of Intent to Award is issued,
- ◆ Does not honor the terms offered in the bid proposal, or
- ◆ Does not negotiate contract terms in good faith.

The security is returned to the bidders when the bid proposals expire or are rejected, or when the Department enters into a contract with the successful bidder, whichever is earliest.

When setting a bid bond amount, consider the value and the purpose of the contract. Industry standards recommend between 5% and 20%. The amount should cover the cost to the Department of having to either rebid the contract or go with a higher bidder.

The bid bond should be a certified or cashier's check or an irrevocable letter of credit in favor or made payable to the Department that guarantees the availability of the services. A surety licensed to do business in Iowa must issue the bond in a form acceptable to the department.

Implementing the Formal Process

To complete the formal procurement process:

1. Write the RFP. Use the RFP template provided at [Hoovr3s2/fiscpub/Request for Proposal Documents](#) and through [Quick Guide to Services Contracting](#). Allow the contractor the latitude to work in a manner best suited for innovation and creativity. Think in terms of activity, service, or product, for the customer, client, stakeholder and the intended benefit or outcome.
2. Determine if legal counsel should review the RFP and forward if needed. For additional assistance, contact Bureau of Purchased Services, Division of Fiscal Management.
3. Issue the RFP.

4. Post the solicitation to the targeted small business web site 48 hours before posting to the eservices website. Make a screen print copy of the targeted small business posting and place it in the contract file. If any targeted small business requests an opportunity to submit a proposal, add the firm to the list of identified potential service providers.
5. Post the solicitation to <http://eservices.iowa.gov/rfp/> web site and any other appropriate web sites. See the directions in the [Quick Guide to Services Contracting](#) to complete the posting. Make a copy of the eservices posting and place the screen print copy in the contract file.
6. Provide resource documents on a web site or in a resource room.
7. Lead and coordinate the bidder's conference, if needed.
8. Receive and review all correspondence and proposals.
9. Establish an evaluation committee. Request information from different sources regarding potential members of the evaluation committee. Potential committee members may include:
 - ◆ Persons familiar with the procurement process
 - ◆ The contract manager or program manager for which the service is being procured
 - ◆ A technical expert
 - ◆ A disinterested technical third party
 - ◆ A legal or finance representative
 - ◆ A representative who may possibly be affected by the contract.
10. Prepare instructions to the evaluation committee. The instructions should include meeting dates, evaluation procedure, responsibilities, and appropriate conduct during the evaluation.
11. Review incoming proposals to determine if they comply with the mandatory requirements. Use the *RFP Mandatory Requirements Checklist*, or create a checklist to use.
12. Disqualify proposals that do not meet the requirements of the RFP or are not submitted within the time limits. Send a letter to the bidder.

13. Package copies of qualifying proposals, evaluation directions, and blank score sheets for the evaluation committee members. Include a copy of the RFP for their review.
14. Facilitate the evaluation process or coordinate a facilitator to do these duties and oversee the evaluation committee, as needed.
15. Document evaluation committee scores.
16. Finalize a recommendation and prepare a summary with the evaluation committee for the final recommendation.
17. Prepare and issue the Notice of Intent to Enter into Contract Negotiations.
18. Negotiate and prepare the contract. Determine whether a contractor is or is not a business associate under the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

If the contractor is a business associate, add the *Business Associate Addendum* to the contract and the contract file. Complete sections 1.2 and 7.2.8 of the contract as appropriate.

19. Respond to any requests for copies of the RFP or bidder proposals. Anyone can request copies of proposals and the RFP regardless of whether they submitted a bid.

NOTE: If a bidder requests that part of the bidder's proposal be kept confidential, the bidder must provide a second copy of the proposal with the confidential material redacted. If a request to review that proposal is received, provide the non-confidential information immediately.

If anyone requests to see the entire bid, which would include the confidential material identified by the bidder, notify the bidder the request has been made to see the entire proposal. The bidder will have a certain period (as stated in the RFP) in which to seek an injunction to prevent the release the confidential information.

If no injunction is provided, release all the confidential information after the deadline date. Consult with the Bureau of Purchased Services if the bidder requests additional time to obtain an injunction.

20. Maintain the required documents for the contract file to be given to the contract manager or program manager upon execution of the contract.

If an appeal is filed, the issuing officer acts as the Department's contact person. The Appeals Section handles contract-related appeals. The issuing officer is responsible for gathering and submitting all appeal documents requested by the Appeals section.

Targeted Small Business Posting

Legal reference: 11 IAC 106.12(8A), Iowa Code section 73.16(2)

The "Iowa Targeted Small Business Act" directs all Departments to establish a procurement goal of procuring at least ten percent of all goods and services from a certified targeted small business (TSB).

In order to assure that targeted small businesses are given an opportunity to participate in solicitations, all requests for proposals or notice of procurement opportunities must be posted to the TSB website.

Regardless of the value of a contract or the process used to solicit bids, all competitive opportunities require posting on the targeted small business TSB website for 48 hours before opening it up to all other parties. Directions for posting a solicitation are available in the [Quick Guide to Services Contracting](#).

EXCEPTION: Contracts with another state agency, a political subdivision of the state of Iowa (cities, counties, public school districts), the federal government, another state government, or a political subdivision of another state, do not need to go through the competitive selection process that includes the TSB website.

Electronic Posting

Legal reference: 11 IAC 105

All requests for proposals or notice of procurement opportunities must be posted to the DAS State of Iowa Vendor and Bid Opportunities web site. If the procurement opportunity is not properly posted on the Vendor and Bid Opportunities web site, any resulting contract is void.

Bids can be viewed at the DAS/GSE web site <http://bidopportunities.iowa.gov> . There is a three-year archive for all posted bids.

After the targeted small business posting, post your solicitation to the Vendor and Bid Opportunities web page at <https://eservices.iowa.gov/rfpadmin/index.php>. Refer to the [Quick Guide to Services Contracting](#) for more detailed instructions on the electronic services posting process.

EXCEPTION: Contracts with the following do not need to go through the competitive selection process that includes the electronic posting:

- ◆ The federal government,
- ◆ Another state agency,
- ◆ Another state government, or
- ◆ A political subdivision of the state of Iowa or another state (cities, counties, public school districts).

Use the [Eservices RFP Posting Application Manual.doc](#) located on the DHS network at Hoovr3s2/FISCPUB, for assistance in posting, reviewing, or editing your RFP. The issuing officers can create a new RFP, revise an existing RFP, or delete an existing RFP within this system. Bid postings can be entered for future postings. Documents, Internet links, addenda, and amendments may be added to the bid.

Fiscal Agent Contracts

A “fiscal agent” is an entity (private or public) that performs the core fiduciary functions of receiving, accounting for, and disbursing of financial resources on behalf of the Department.

All other services provided by a fiscal agent are considered as coincidental to the core duties. In addition to the core fiduciary services, the fiscal agent may provide other services including, but not limited to:

- ◆ Carrying out human resources or personnel functions,
- ◆ Subcontracting for direct services to customers or clients, the
- ◆ Processing of provider and customer claims,
- ◆ Quality assurance and fraud prevention and detection,
- ◆ Data collection and reporting (including the preparation and presentation of financial documents)
- ◆ Assumption of a part or all of the administrative activities associated with an entire program.

Use a fiscal agent contract for the purpose of the payment of services and goods that clients are eligible for and approved to receive. Fiscal agent services are contracted when:

- ◆ Insufficient resources (e.g., money, time, office space, supplies, personnel, etc.) exist within the Department to carry out fiduciary duties relative to the management of financial resources; or
- ◆ Material (real or significant) efficiencies or savings are derived by entering into a contract with an external entity to act as a fiduciary for the Department; or
- ◆ State or federal statutes, regulations, or rules permit or require use of a fiduciary to provide fiscal agent services.

Document in the contract file that one or more of these conditions exist before engaging in the informal or formal competitive solicitation process. Document other services procured coincidental to the fiscal agent services in both the contract file and in the service contract. Clarify the nature of the services and their relationship to the provision of core fiduciary services.

The terms of the contract shall require the fiscal agent to:

- ◆ Maintain separate financial accounts to account for any money under its control.
- ◆ Employ generally accepted accounting principles (GAAP) and appropriate internal controls to account for Department financial resources placed in trust.
- ◆ Have an annual independent audit and provide a report to the Department regarding the annual independent financial audits of these resources.

Create a contract file using the *Contract File Checklist*. The file should include:

- ◆ A Pre-Determination of Contracting document.
- ◆ Justification of the need for a fiscal agent.
- ◆ The name and location of the fiscal agent.
- ◆ All *Pre-Contract Questionnaires*.
- ◆ The contract.
- ◆ A description of all services (both core fiduciary and coincidental).
- ◆ Documentation of all contacts and meetings with the contractor.
- ◆ Documentation of all monitoring and review activities.
- ◆ A description of the internal control procedures between the Department and the fiscal agent.

Review fiscal agent financial or related records and documentation on a quarterly basis or more often if required by monitoring language in the service contract.

Other Procurement Processes

Other procurement processes include:

- ◆ [Sole-source contracts](#)
- ◆ [Emergency procurement](#)
- ◆ [28E agreements](#)
- ◆ [Intergovernmental contracts](#)
- ◆ [Letters of agreement](#)
- ◆ [Memorandum of understanding](#)
- ◆ [Purchasing flexibility exception](#)

Sole-Source Contracts

Legal reference: 11 IAC 106.7(8A)

Sole-source contracts are used when:

- ◆ One service provider is the only one qualified or eligible to perform the service;
- ◆ The services being purchased involves work that is of such a specialized nature or related to a specific geographic location that only a single source could provide the services; or
- ◆ Applicable law requires, provides for, or permits the use of sole-source procurement.

The Department director must sign the sole-source justification form.

To complete the process for a sole source contract:

1. Review the Guidelines for Sole Source Justification and the Directions for Submission of Sole Source Request.
2. Complete the Sole Source Justification form, note the vendor's name on the form. Submit the completed form to the Bureau of Purchased Services, electronically. Directions to complete the form are available in the [Quick Guide to Services Contracting](#) and at [Hoovr3s2/fiscpub/ Contract Documents](#).

- ◆ For contracts with the potential value of more than \$50,000 annually, submit the *Report of Sole Source Procurement* form six months before the effective date. Six months allows sufficient time for the RFP process should the sole-source request not meet the sole-source criteria.
 - ◆ For contracts with a value of less than \$50,000, submit the *Report of Sole Source Procurement* form at least six weeks before the effective date to allow sufficient time for the competition process.
3. The form will be processed. If the sole source is deemed appropriate, the Director will sign the sole source form.
 4. Negotiate a contract if the sole source is approved.
 5. Prepare the contract document and acquire signatures of both parties. Attach the approved sole source justification form to the contract.
 6. Create a contract file using the Contract File Checklist, which should include:
 - ◆ A completed Pre-Determination of Contracting document,
 - ◆ The approved Sole Source Procurement Justification form,
 - ◆ The contract,
 - ◆ All *Pre-Contract Questionnaires*.
 - ◆ Documentation of all contacts and meetings with the contractor, and
 - ◆ Documentation of all monitoring and review activities.

Emergency Procurement

Legal reference: 11 IAC 106.8(8A)

An “emergency procurement” is an acquisition of a service or services resulting from an emergent need. Emergency procurements or purchases should not be used as a solution for hardships caused by neglect, poor planning, or lack of organization by the agency.

To complete the process for an emergency procurement:

1. Complete the *Report of Emergency Procurement* as soon as the need for emergency procurement is identified. Include the vendor’s name on the form. Directions to complete the form are available in the [Quick Guide to Services Contracting](#) and in the [Hoovr3s2/fiscpub/ Contract Documents](#).

2. Submit the completed *Report of Emergency Procurement* to the Bureau of Purchased Services electronically.
3. The Bureau of Purchased Services will review the report and notify the contract manager via telephone or e-mail. The report may be:
 - ◆ Approved and sent on to the director, or to the appropriate designee if the director is not available;
 - ◆ Disapproved as it did not meet criteria; or
 - ◆ Neither approved nor denied, since a revision is requested; an explanation of what is needed will be provided.
4. When the report indicates the emergency procurement is appropriate, the director will sign the report of emergency procurement. Upon final approval and signature, the *Report of Emergency Procurement* will be returned to the Bureau of Purchased Services, and then forwarded to contract manager. The signed form must be attached to the contract.
5. Negotiate the contract.
6. Prepare the contract document and acquire signatures of both parties.
7. Create the contract file using the *Contract File Checklist*. The contract file should include:
 - ◆ A Pre-Determination of Contracting document.
 - ◆ The *Report of Emergency Procurement*.
 - ◆ The contract.
 - ◆ All *Pre-Contract Questionnaires*.
 - ◆ Documentation of all contacts and meetings with the contractor.
 - ◆ Documentation of all monitoring and review activities.

28E Agreements

Legal reference: 11 IAC 106.4(8A)

A 28E agreement is a contract between government agencies or private entities to provide joint governmental services that the agencies are each authorized to perform, or by contract, creates a new entity to perform the services.

Draft the 28E agreement to conform to both the statutory requirements at Iowa Code 28E.5 and administrative contracting rules at 11 IAC Chapters 106 and 107.

After all signatures are obtained, the 28E agreement must be filed with both the Secretary of State and the County Recorder. There is no fee for filing the 28E agreement with the Secretary of State. Most counties charge a filing fee and can verify the applicable fee schedule.

For additional assistance, please contact the Bureau of Purchased Services, Division of Fiscal Management.

Create a contract file using the *Contract File Checklist*. The file should include:

- ◆ A completed *Pre-Determination of Contracting* document,
- ◆ The 28E agreement,
- ◆ All *Pre-Contract Questionnaires*.
- ◆ Documentation of all contacts and meetings with the contractor, and
- ◆ Documentation of all monitoring and review activities.

Intergovernmental Contracts

Legal reference: 11 IAC 106.4(8A)

When another governmental entity has resources available to supply a needed service, an intergovernmental agreement can be used. Use the intergovernmental agreement for contracts with other state agencies, federal government entities, the state universities, the area community colleges and county extension offices.

For additional assistance, please contact the Bureau of Purchased Services, Division of Fiscal Management.

Create a contract file using the *Contract File Checklist*. The file should include:

- ◆ A completed *Pre-Determination of Contracting* document.
- ◆ The contract.
- ◆ All *Pre-Contract Questionnaires*.
- ◆ Documentation of all contacts and meetings with the contractor.
- ◆ Documentation of all monitoring and review activities.

Letter of Agreement

Legal reference: 11 IAC 106.4(8A)

The letter of agreement is used when the contract amount is less than \$5,000 for the term of the contract, including all renewals.

A letter of agreement is often used for short-term or one time contracts, such as training or presentation services. A letter of agreement may also be used when contracting with cities, municipalities, county governments, public school districts, or community action agencies.

For additional assistance, please contact the Bureau of Purchased Services, Division of Fiscal Management.

Create a contract file using the *Contract File Checklist*. The file should include:

- ◆ A completed *Pre-Determination of Contracting* document,
- ◆ The contract,
- ◆ All *Pre-Contract Questionnaires*.
- ◆ Documentation of all contacts and meetings with the agencies, and
- ◆ Documentation of all monitoring and review activities.

Memorandum of Understanding

"Memorandum of understanding" agreements are used for cooperative agreements between state agencies or for state and federal agency partnering. Use a memorandum of understanding for contracts between state agencies only when grant-related contracts are executed.

For additional assistance, please contact the Bureau of Purchased Services, Division of Fiscal Management.

Create a contract file using the *Contract File Checklist*. The file should include:

- ◆ A *Pre-Determination of Contracting* document.
- ◆ The contract.
- ◆ All *Pre-Contract Questionnaires*.
- ◆ Documentation of all contacts and meetings between the agencies.
- ◆ Documentation of all monitoring and review activities.

Purchasing Flexibility Exception

Legal reference: 11 IAC 105.15

The threshold for the purchase of goods or services without the need for competitive bids is \$1,000. When the cost of purchased services for the total fiscal year is less than \$1,000, no formal written contract is required.

Whether it is a one-time expense or multiple purchases from the same vendor during the fiscal year, the threshold is the same. If the total amount of the services provided during a fiscal year is anticipated to be \$1,000 or more during a single fiscal year, execute a written contract before the first purchase.

NOTE: This increased flexibility does not apply to purchases with a state procurement card.

Though not required below the threshold, it is often appropriate to develop a written contract regardless of the amount of the purchase.

When a written contract is not deemed necessary, a note must be included in the description field of the GAX document indicating purchases of services from this vendor are not expected to exceed \$1,000.00 for the current fiscal year.

Vendors should complete and sign a [W-9](#) form if they are not currently receiving payments from any state agency. Attach the W-9 to the GAX form when submitting the claim.

Claims for the purchase of services from a vendor should be submitted on a GAX form. Written documentation **must** be attached to all claims for payment including:

- ◆ The specific service that was purchased.
- ◆ The dollar amount of the purchase.
- ◆ The reason for the purchase.
- ◆ An original invoice.

Management and Monitoring

Legal reference: 11 IAC 107.4(2), 11 IAC 107.4(2)

Managing a contract is unique to each particular contract and program. Some contracts require more monitoring and Department involvement than others. Regularly monitor a contract after it is executed.

"Monitoring" is any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of the contract. Monitoring is a preventative measure. It supplies an opportunity to provide technical assistance to the contractor on:

- ◆ Complying with the terms and conditions of the contract,
- ◆ Complying with applicable laws and regulations,
- ◆ Preventing non-compliance, and
- ◆ Resolving potential problems.

The **contract owner** is usually a service area manager, facility superintendent, or division administrator. The contract owner has overall corporate responsibility and accountability to ensure the procurement aligns with the department's strategic plan. The *contract owner* has the authority to:

- ◆ Sign payment authorizations and other key and binding documents.
- ◆ Delegate the technical and day-to-day operational management of the contract to one or more subordinate staff.

Contract ownership cannot be delegated. Actual ownership rests with the service area manager, superintendent, or division administrator, who retains responsibility for:

- ◆ Providing direction, support and guidance to those engaged in management of the procurement, and
- ◆ Providing leadership in the resolution of any disputes with contractors.

In the case of formal competition, the contract owner may act as issuing officer for the procurement or may delegate this role to subordinate personnel or to a decategorization coordinator.

The contract owner usually delegates the oversight activities to a **contract manager**, who is responsible for ongoing monitoring and review. The contract manager:

- ◆ Provides guidance to the contractor;
- ◆ Documents all activity;
- ◆ Completes a review for all invoices;
- ◆ Completes the necessary paperwork to make payment to the contractor; and
- ◆ Maintains a complete file containing the appropriate documentation to support the need for and process of acquiring the contract. Adequate documentation is essential for effective contract monitoring. The contract file should contain:
 - The *Pre-Determination of Contracting* document.
 - The RFP with the *RFP Mandatory Requirements Checklist*.
 - Documentation of the postings to the TSB web site and the eservices web site.
 - Documentation of the procurement and evaluation process.
 - The notice of intent to enter into contract negotiations.
 - The contract.
 - All *Pre-Contract Questionnaires*.
 - The *Contracting File Checklist*.
 - The *Business Associate Agreement*, if needed.
 - Documentation of all monitoring and review activities.
 - Any amendments to the contract.
 - Documentation of all contacts and meetings with the contractor, including copies of letters, meeting notes, and documentation of phone conversations.

Monitoring, Review and Payment Clauses

Legal reference: 11 IAC 107.4(8,8A)

The Accountable Government Act, Iowa Code Chapter 8E, requires all contracts include monitoring, review, and payment clauses, except under certain conditions. Legislation and administrative rules require performance criteria with specific indicators to monitor contracts.

Monitoring clauses describe the methods to oversee contractor compliance with the conditions of the contract.

Review clauses describe the methods to review the contractor's performance.

Payment clauses describe the amount of, or the basis for, payment consideration and are dependent on monitoring clauses and any post-contract review procedures.

Monitoring Activities

“Monitoring” describes the methods to oversee compliance during the performance of the contract. It includes any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract.

Once the contract is signed and the contractor has started the work, it is important to monitor the provider’s performance and promptly deal with any problems that arise. Establish controls and monitor performance to ensure all work is completed within the requirements specified in the contract.

Monitoring activities include but are not limited to:

- ◆ **Periodic contractor reporting:** Require the contractor to submit progress reports or other appropriate data, based on pre-defined criteria. Review the contractor’s reports for verification of services provided and adherence to the contract. Substandard performance should be identified and addressed timely and appropriately.
- ◆ **Invoice reviews:** Compare billings with the terms of the contract. Ensure the costs being charged and the payments being made are within the terms of the contract.
- ◆ **Periodic contact with contractor:** Maintain contact with the contractor. Establish a continuous dialogue with the contractor. Review progress on a regular basis. Every communication with the contractor is an opportunity to monitor activity.

Performance criteria define the standards for measuring contractor performance, provide a means to monitor performance, measure satisfaction with the contractor, and provide data for program evaluation. The criteria provide an objective means to determine if the contractor is adequately fulfilling the terms of the contract.

Performance measures are mathematical evaluations that document the contractor’s inputs, outputs, efficiency, quality, or outcome of the contractor’s success at implementing the contract. Performance measures relate to the objective of the contract.

Performance measures are performance criteria because they provide an objective means to monitor a contract. Not all performance criteria are performance measures. Performance measures should:

- ◆ Clearly identify the purpose of the contract,
- ◆ List the services or activities that are the basis for the contract,
- ◆ List the contract parameters,
- ◆ Define success.
- ◆ List specific measures.
- ◆ Determine reporting requirements and where the data will come from.
- ◆ Set the targets and performance thresholds.

Mathematical performance measures do not assure adequate and competent contract management. Many other aspects of contract management must be included to assure full value is received from a specific contract.

Have regular meetings to monitor progress. Weekly, monthly, quarterly, or semiannual meetings between the contractor and the contract manager should be conducted for oversight.

Regular monitoring will indicate problems with failure to produce or submit key deliverables, findings of inferior quality of services, failure to perform all or part of the contract, late performance, or late submission of reports on a recurring basis.

If there are performance problems, address the problems immediately, before they become recurring or serious. Consider whether a corrective action plan is needed. Corrective action should be taken immediately.

Review Activities

Review clauses provide for comprehensive evaluations of performance measurements that include but are not limited to, outcome measures, output measures, efficiency measures, quality measures, or a review plan.

Review the performance criteria and performance measures when monitoring the contract. Use the *Contract Performance Evaluation* form in [Hoovr3s2/fiscpub/ Contract Documents](https://hoovr3s2/fiscpub/Contract Documents) to document ongoing reviews and for the final review to determine contract compliance.

Review the contract on a regular schedule, preferably a schedule set up in the contract. If a review schedule is not specified in the contract:

- ◆ Complete a six-month review for one-year contracts.
- ◆ Complete a six-month review for the first year for multi-year contracts, followed up on an annual basis for each year thereafter.

You may schedule monitoring and reviews more frequently if necessary. Document the review schedule for each contract in the contract record.

Maintain all reports, invoices, and documentation in the contract file.

Once the contract has ended:

- ◆ Follow up on any activities that the contractor is completing (e.g., final report);
- ◆ Ensure all invoices are received and paid; and
- ◆ Make final payments to the contractor when you have assessed whether objectives and outcomes have been met.

Payment Activities

Fiscal monitoring includes a review of the contractor's invoices and supporting documentation. Before authorizing payment:

- ◆ Verify that the contractor has adequately demonstrated the satisfactory delivery of services as detailed in the contract. Determine:
 - The accuracy of the contractor's invoices and documentation,
 - Whether billings are consistent with contract requirements, and
 - If total payments are within the limits set by the contract.
- ◆ Ensure that payment documentation is on file.

Use the contract's established performance criteria to determine payment. The contractor's performance under the contract determines when and how much the contractor should be paid.

If payment is dependent on specific measures, review all reports and documentation before approving payment. Review all invoices and verify that the costs being billed are accurate and that the deliverables and performance measures as outlined in the contract were met.

If a contract has incentive or disincentive payments, those payments should be dependent on reports or other documentation. Use the reports and all other documentation to determine if:

- ◆ The contractor is eligible for an incentive payment;
- ◆ The contractor will incur a disincentive for non-performance; or
- ◆ Nothing needs to be done.

Document the review and any incentive or disincentive determinations.

Fidelity Bond

A fidelity bond provides funds to the Department in the event that the Department or the state of Iowa suffers any liability, loss, damage, or expense as a result of any fraudulent or dishonest act or omission of:

- ◆ The contractor or any subcontractor;
- ◆ Any officer, director, employee or agent of the contractor or any subcontractor; or
- ◆ Any parent or subsidiary corporation of the contractor or any subcontractor related to the performance of this contract.

The contractor must provide the fidelity bond within the number of days specified in the contract before the effective date of the contract. The contractor must provide a copy of the bond to the Department.

The contractor shall pay the cost of the bond. The bond shall be in a form customarily used in the industry, written by a surety authorized to do business in Iowa and must be acceptable to the department.

The bond shall be in effect at all times during the term of the contract and any extensions or renewals and for one year following the conclusion of the contract. The contractor will maintain the required fidelity bond coverage without any lapse in coverage.

Failure on the part of the contractor to furnish such a bond in the time stated or to maintain the bond in full force and effect during the term of the contract and any extensions or renewals is a material breach of the contract. Such failure shall be considered cause for the Department to declare the contractor in default under the contract.

Performance Bond

A performance bond protects the Department once the contract is awarded. It provides protection to the Department if the contractor fails to perform the contracted services.

The bond shall be in a form customarily used in the contractor's industry and shall be written by a surety authorized to do business in Iowa and that is acceptable to the Department. Industry standards recommend the performance bond on a larger contract should be approximately 20% of the contract value.

The bond should be posted and the contractor should provide a copy of the bond to the Department within ten days of execution of the contract. The contractor shall pay the cost of the bond.

In the event that the contractor or any subcontractor or any officer, director, employee or agent of the contractor or any subcontractor or any parent or subsidiary corporation of the contractor or any subcontractor fails to fully and faithfully perform each material requirement of the contract, the performance bond shall be forfeited to the Department. These requirements include without limitation the contractor's obligation to indemnify the Department and pay damages to the Department.

The bond shall be in effect at all times during the term of the contract, any extensions or renewals, and for one year following the conclusion of the contract. The contractor shall maintain the required performance bond coverage without any lapse in coverage. A lapse of the bond may be considered cause for the Department to declare the contractor in default under the contract.